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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91189418
Party	Plaintiff Speed Channel, Inc.
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Date	09/28/2009
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# **EXHIBIT E**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Application Serial Nos.:	77476098 77497086 77476107 77478035
Filed:	May 15, 2008 June 12, 2008 May 15, 2008 May 19, 2008
Marks:	SPEEDVISION SPEEDVISION SPEEDVISION HD SPEEDVISION (and Design)
Publication Date:	November 25, 2008 (for all opposed applications)

SPEED CHANNEL, INC. Opposer,	)	
	)	
v.	)	Opposition No. 91189418
	)	
PHOENIX 2008 LLC Applicant.	)	
	)	

**OPPOSER SPEED CHANNEL, INC.'S FIRST SET OF REQUESTS FOR ADMISSIONS  
TO APPLICANT PHOENIX 2008 LLC**

In accordance with the provisions of Rule 36 of the Federal Rules of Civil Procedure and TBMP § 407, Opposer Speed Channel, Inc. ("Speed") hereby propounds the following requests for admission to PHOENIX 2008 LLC ("Applicant"), to be answered fully and separately in writing and under oath by Applicant, all pursuant to Rule 36 of the Federal Rules of Civil Procedure and TBMP § 407. Responses shall conform in all respects to the Federal Rules of Civil Procedure and TBMP § 407.

**Instructions and Definitions:**

1. As used herein, the following definitions shall apply:
  - a. The term "Applicant" means PHOENIX 2008 LLC, together with Applicant's principals, shareholders, members, officers, directors, employees, agents, representatives, predecessors, successors, attorneys and any business entity owned or controlled by or under Applicant's direct or indirect control or management or otherwise acting on Applicant's behalf.
  - b. The term "Applicant's Marks" mean the marks that are the subject of United States Trademark Application Serial Nos. 77476098, 77497086, 77476107 and 77478035.
  - c. The terms "Speed" or "Opposer" mean Opposer Speed Channel, Inc.
  - d. The term "Speed Marks" means Opposer's well-known trademarks and service marks that incorporate the term "SPEED," and that are identified in Paragraphs 5 and 6, and Exhibits A and B, of the Notice of Opposition filed in this proceeding.
  - e. The term "Speed Applications" means the United States Trademark Applications for the Speed Marks identified in paragraph 6 of the Notice of Opposition filed in this proceeding. Copies of data extractions from the United States Patent and Trademark Office's TARR and TESS databases regarding the Speed Applications are annexed as Exhibit B to the Notice of Opposition filed in this proceeding.
  - f. The term "Speed Registrations" shall mean the United States Trademark Registrations for the Speed Marks identified in paragraph 5 of the Notice of Opposition filed in this proceeding. Copies of data extractions from the United States Patent and Trademark Office's TARR and TESS databases regarding the Speed Registrations are annexed as Exhibit A to the Notice of Opposition filed in

this proceeding.

- g. The term "Speedvision Mark" means the SPEEDVISION Mark identified in paragraph 7 of the Notice of Opposition filed in this proceeding.
- h. The term "Opposed Applications" means United States Trademark Application Serial Nos. 77476098, 77497086, 77476107 and 77478035.
- i. "Documents" or "documents and things" shall mean those items enumerated in Rule 34 of the Federal Rules of Civil Procedure, and shall include, without limitation, writings, drawings, graphs, charts, photographs, models, prototypes, commercial goods, photo records, films, microfilms, microfiche, audio tapes, video tapes, magnetic media, optical media, and any other data compilations from which information can be obtained or translated, if necessary, by electronic devices into reasonably useable form. Any document or thing that differs from the original or another duplicate thereof because of additions and/or deletions, or any document that is a non-changed duplicate but which appears in a different file, shall be considered an original and shall be separately produced.
- j. Documents or documents and things include, but are not limited to, electronic mail ("email") and metatext.
- k. The term "identify" has the following meanings:
  - (1) When identifying a communication, "identify" means to provide:
    - (a) the exact words of the communication;
    - (b) the date of the communication;
    - (c) the identity of any other entities who have any knowledge of the communication, particularly including the entity's address and

telephone number; and

(d) the exact words and date of any response to the communication.

(2) When identifying an entity or individual, "identify" means to provide the entity's or individual's full name, business address, telephone number, the business in which the entity or individual is engaged and, if the entity is not a natural person, the person or persons at the entity who serve or served as Applicant's primary point of contact.

2. Each of the following requests for admissions is deemed to be a continuing request, and demand is hereby made upon Applicant that, if at any later date Applicant obtains any additional facts or things or makes any assumptions or reaches any conclusions, opinions, or contentions that are different from those set forth in the responses to these requests for admissions, then in such case Applicant shall promptly notify Opposer and take such steps as may be necessary to truthfully and completely respond to such requests for admissions.
3. If Applicant objects to any portion of a request for admissions, Applicant should respond to any portion of the request to which Applicant does not object.
4. If Applicant objects to a request on the ground that it is too broad, please provide all requested information that Applicant concedes are relevant or reasonably calculated to lead to the discovery of admissible evidence.
5. If Applicant objects to a request on the ground that the request constitutes an undue burden, please provide all information which can be produced without causing what in Applicant's opinion would be an undue burden.

6. To the extent that Applicant contemplates objecting to any portion of a request for admissions on the ground that the request requires the disclosure of trade secret or other confidential research, development, or commercial information, Applicant is directed to 37 C.F.R. § 2.116(g) and the TTAB's PROVISIONS FOR PROTECTING CONFIDENTIALITY OF INFORMATION REVEALED DURING BOARD PROCEEDING (the "Standardized Protective Order), effective August 31, 2007 and which applies to the instant proceeding.

#### **REQUESTS FOR ADMISSIONS**

##### **REQUEST NO. 1:**

Each of the documents and things that Applicant has produced to Opposer is a true, accurate, authentic and complete copy of such document or thing.

##### **REQUEST NO. 1:**

Each of the documents and things that Applicant has produced to Opposer is admissible in this proceeding.

##### **REQUEST NO. 2:**

All of Applicant's answers to any interrogatory from Opposer are true, accurate and complete.

##### **REQUEST NO. 3:**

Applicant has produced all documents and things that are responsive to any request for production of documents and things, or any interrogatory, from Opposer.

##### **REQUEST NO. 4:**

As of the date that Applicant responds to these requests for admissions, Applicant has not used the marks identified in the Opposed Applications in commerce within the United States.

**REQUEST NO. 5:**

Consumers associate the Speedvision Mark with Speed.

**REQUEST NO. 6:**

Consumers associate the Speedvision Mark with Speed.

**REQUEST NO. 7:**

Applicant has no evidence that contravenes Speed's contention that consumers associate the Speedvision Mark with Speed.

**REQUEST NO. 8:**

Consumers associate the Speed Marks with Speed.

**REQUEST NO. 9:**

Applicant has no evidence that contravenes Speed's contention that consumers associate the Speed Marks with Speed.

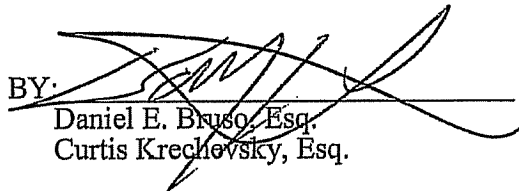
**REQUEST NO. 10:**

Applicant's use of Applicant's Mark is likely to cause confusion with the Speed Marks.

RESPECTFULLY SUBMITTED,  
Speed Channel, Inc.

Dated: June 4, 2009

BY:

  
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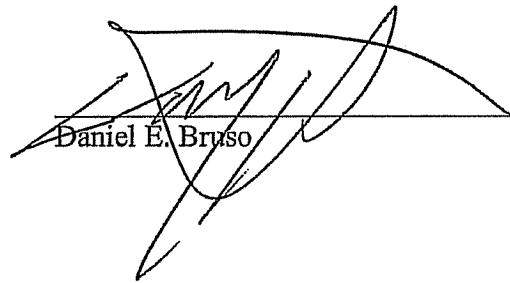
Opposer's Matter Reference No.: FEG0573OPPUS



**CERTIFICATE OF SERVICE**

I, Daniel E. Brusco, Esq., counsel to Opposer Speed Channel, Inc. in Opposition No: 91187158, certify that, on the 4<sup>th</sup> day of June 2009, I served a copy of OPPOSER SPEED CHANNEL, INC.'S FIRST SET OF REQUESTS FOR ADMISSIONS TO APPLICANT PHOENIX 2008 LLC, via first class mail, postage prepaid, upon Applicant's attorney of record and to the additional persons identified below:

Brian J. Hurh, Esq.  
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Daniel E. Brusco